



U.S. Citizenship  
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FILE:

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Office: NEBRASKA SERVICE CENTER

Date:

MAR 28 2007

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Maiphuson*

Robert P. Wiemann, Chief  
Administrative Appeals Office

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**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks employment in the fields of biometrics and forestry. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits additional evidence. We are persuaded that the new evidence overcomes the director's concerns.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in Natural Resources and Environmental Sciences from the University of Illinois at Urbana-Champaign (UIUC). The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, natural resource computer modeling, and that the proposed benefits of his work, improved modeling, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-

trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner obtained his first Master's degree from the Central South Forestry University in China in 1988 after which he was a lecturer at that institution until August 1993. In October 1996, the petitioner received a second Master's degree in Forestry from UIUC. In May 1998, the petitioner received a third Master's degree from the same institution in statistics. Finally, the petitioner received a Ph.D. from UIUC in Natural Resources and Environmental Sciences on January 15, 2000.

[REDACTED] of Central South Forestry University, asserts that the petitioner was a "responsible teacher" and "excellent researcher." The petitioner was the Principal Investigator on a project to develop database management software for "Cut Wood Data." The petitioner published four academic papers and a book.

[REDACTED] Central South Forestry University, provided additional details about the petitioner's time there. Specifically, the petitioner was a "critical researcher" of a project to produce a simulation system of management for the massoniana pine, funded by the Ministry of Forestry. The petitioner improved upon a biological model to simulate the growth processes of the pine in different climate zones. The system was tested in four forest farms, increasing income at these farms by three million Yuan.

The Ministry of Forestry recognized the petitioner's pine simulation system in 1992 with a second place Science and Technology Progress award. The ministry recognized five other projects with a second place award and the petitioner is one of eight researchers involved in the project. [REDACTED]

[REDACTED] asserts that such awards are limited to projects that "discover new natural laws/rules, or develop new theories or procedures, or improve productivity and produce significant ecological and economical effect." Finally, Professor [REDACTED] asserts that only a small percentage of projects are recognized with prizes. The petitioner submitted the official procedures for evaluating science and technology achievements.

Throughout this proceeding, the petitioner had submitted three letters from [REDACTED] the petitioner's Master's and Ph.D. thesis advisor at UIUC. [REDACTED] then employed the petitioner in his laboratory as a scientific research programmer. After the date of filing, the petitioner was promoted to Associate Director of the laboratory. The letters are dated in 2002, 2003 and 2005. In his initial letter, [REDACTED] discusses the petitioner's work on a project funded by the Department of

Defense, the Environmental Protection Agency and the Department of Energy. The project focused on error and uncertainty in ecological modeling and simulation. The petitioner was responsible for the most technical software programming for the project, using both parallel supercomputers and personal computers to develop uncertainty analysis software.

Further describes his own article on the Bayesian approach, coauthored by the petitioner, as "a major step forward in parameterization of complex models." Specifically, this project represents "the first time that calibration of complicated models for complex ecosystems has been based on realistic, objective and systematical information."

Finally, the petitioner improved the Fourier Amplitude Sensitivity Test (FAST) by extending it to allow for an uncertainty analysis of soil erosion. One of the petitioner's papers on this subject, relating to the impact of off-road vehicular traffic, describes a methodology for the assessment of uncertainty of models that have been developed for managing federal lands. asserts that this model will be used by the U.S. Army Corp of Engineers to comply with federal environmental protection laws. In his 2003 letter, goes further, asserting that the petitioner's recent paper on this subject "will be a highly cited paper" and "has been of major interest by decision-makers and managers of federal lands when it was presented in Strategic Environmental Research and Development Program (SERDP) conferences."

Also in his 2003 letter, asserts that the petitioner developed all of the software for UIUC's Uncertainty Analysis Software Library (UASLIB). Specifically, the petitioner "was responsible for designing, coding and testing throughout the project" and authored the user guides. In addition, the petitioner did most of the programming for the case studies websites. Finally, asserts that the petitioner has been acknowledged in other published studies for his work encoding all of the computer programs.

In his 2005 letter, asserts that in the last six years, his laboratory has developed eight statistical methods, five of which the petitioner developed. further asserts that his laboratory developed two computational packages for uncertainty analysis and model calibration, improved various ecological and urban sprawl models and studies more than eight different ecosystems. This work resulted in 45 scientific papers and 20 presentations, to which the petitioner contributed as an author or, even when not credited as an author, to a lesser extent.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In support of [REDACTED] letters, the petitioner submitted his publication and citation record, letters from three coauthors of an article citing the petitioner work, e-mail correspondence, a copyright, invitations to present his work or review a manuscript, recognition received by [REDACTED] and evidence that the petitioner's work has been applied by his collaborators outside UIUC.

As of the date of filing, the petitioner's 1999 article on Bayesian models had been cited. The article, coauthored with the Head of the Department of Forestry, Danish Forest and Landscape Research Institute, is listed on a Danish website as a "relevant publication." An independent research team had cited the petitioner's 2001 article in the Journal of Forest Research. Other articles cited the petitioner's work after the filing of the petition. While the petitioner's citation record by itself is not remarkable, the remaining evidence, especially a letter submitted on appeal, affirms the petitioner's influence in the field.

[REDACTED] Forest Resources Department at the University of Minnesota [REDACTED] a professor at that university; and [REDACTED] a docent and academy researcher at the University of Helsinki, coauthored a 2000 article in *Tree Physiology* that cites the petitioner's 1999 article reporting a Bayesian approach for forest modeling. All three submit letters in support of the petition. [REDACTED] asserts that he cited the petitioner's work as "a major step forward – an outstanding piece of work." [REDACTED] further asserts that the petitioner's subsequent work has also been excellent. [REDACTED] asserts that he cited the petitioner's work because it "presented a new method developed for estimation of the parameters of process models." [REDACTED] continues that by incorporating previous knowledge and historical observations to estimate both marginal and high-dimension joint distributions of the parameters of process models, the petitioner improved upon previous models. [REDACTED] concludes that the petitioner's model is "state-of-the-art." [REDACTED] provides similar information to that provided by [REDACTED]

The petitioner submitted evidence that graduate students in Venezuela contacted [REDACTED] for more information on FAST, who passed the request on to the petitioner who forwarded his article to the graduate students. A response from the graduate students reveals that they relied on the petitioner's work.

The petitioner submitted a 2002 letter from [REDACTED] U.S. Army Engineer Research and Development Center (ERDC), Construction Engineering Research Laboratory (CERL), to UIUC expressing appreciation for [REDACTED] work on the Land Based Carrying Capacity (LBCC) program. While CERL is local to Illinois, [REDACTED] asserts that the LBCC program has gained national recognition.

UIUC's website credits the petitioner and three others with the development of the Uncertainty Analysis Software Library (UASLIB). The petitioner submitted evidence that the Society of American Foresters (SAF) bestowed an Award in Forest Science upon [REDACTED] at the 2003 SAF convention. The materials reveal that the awards recognize a comprehensive history of sustained contributions to the forestry profession, as opposed to one specific discovery. The bio for [REDACTED]

Gertner in the award announcement, however, lists UASLIB as one of his significant accomplishments.

On appeal, the petitioner submits a letter from [REDACTED] and Research Biologist at ERDC. While much of [REDACTED] letter discusses accomplishments that postdate the filing of the appeal [REDACTED] notes that the petitioner's 2002 off-road vehicle simulation represents an influence beyond Illinois as it related to Fort Hood, Texas. [REDACTED] further asserts, for the first time in the record, that the petitioner's models have been adopted in the Army's 2002 Standard Operating Procedures (SOP) and provides two citations for Army SOPs incorporating the petitioner's models. A news release reveals that [REDACTED] received a Strategic Environmental Research and Development Program (SRDP) award for two years in a row for his work on maneuver training at more than 100 military installations worldwide.

Additional independent letters of support and evidence of frequent and wide citation as of the date of filing would clearly bolster the record. Nevertheless, the petitioner did submit letters of support from individuals with whom he has not collaborated. These letters provide more than general praise of the petitioner's abilities. Nor do they simply allege that the petitioner has unique or rare credentials. Rather, they cite specific accomplishments and improvements to previous models that are not merely predicted to be beneficial, but that have been adopted by the U.S. Army in its SOPs.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the above testimony, and further testimony in the record, establishes that the forestry community recognizes the significance of this petitioner's research rather than simply the general *area* of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the alien employment certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.